

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1780

Introduced by Assembly Member Donnelly

February 18, 2014

~~An act relating to taxation.~~ *An act to add Sections 17053.18 and 23618 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1780, as amended, Donnelly. Income taxes: credit: motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to an applicable percentage of either 20% or 25%, respectively, of the qualified expenditures, as defined, attributable to the production in California of a qualified motion picture, as defined. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000 through the 2016–17 fiscal year.

This bill would establish new, alternative credits under the Personal Income Tax Law and the Corporation Tax Law for taxable years beginning on or after January 1, 2016, allowing a credit equal to 20% of the qualified expenditures attributable to the production in California of one or more qualified motion pictures, defined to include a feature,

television series, music video, commercial, and video game, with a aggregate qualified expenditure amount of at least \$500,000. The bill would provide that the credit amount may be increased by an additional 10% if each qualified motion picture, for which qualified expenditures are aggregated for the claim of credit, includes a California promotion, as specified. The bill would further provide that the credit amount may be increased by up to an additional 5% if each qualified motion picture, for which qualified expenditures are aggregated for the claim of credit, incurred or paid the qualified expenditures relating to original photography outside of a major city zone, as defined. The bill would authorize any credit allowed pursuant to these provisions to be sold to an unrelated party subject to specified requirements.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California.~~

~~This bill would state the intent of the Legislature to enact legislation to allow a transferable tax credit for specified motion pictures in an amount equal to 20% of production and postproduction expenditures, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.18 is added to the Revenue and
2 Taxation Code, to read:
3 17053.18. (a) (1) For taxable years beginning on or after
4 January 1, 2016, there shall be allowed to a qualified taxpayer a
5 credit against the “net tax,” as defined in Section 17039, in an
6 amount equal to the applicable percentage, as specified in
7 paragraph (2), of the qualified expenditures for the production of
8 a qualified motion picture in California. A credit shall not be
9 allowed under this section for any qualified expenditures for the
10 production of a motion picture in California if a credit has been
11 claimed for those same expenditures under Section 17053.85.

1 (2) *For the purposes of paragraph (1), the applicable percentage*
2 *shall be:*

3 (A) *Subject to subparagraph (B) and (C), 20 percent of the*
4 *qualified expenditures attributable to the production of one or*
5 *more qualified motion pictures in California with an aggregate*
6 *qualified expenditure amount that equals or exceeds five hundred*
7 *thousand dollars (\$500,000).*

8 (B) *The applicable percentage shall increase by 10 percent if*
9 *each qualified motion picture, for which qualified expenditures*
10 *are aggregated for the particular claim for the credit, includes a*
11 *California promotion. For a feature, television series, or video*
12 *game, the California promotion shall consist of a five-second long*
13 *logo that promotes California in the end credits before the*
14 *below-the-line crew crawl for the life of the project and a link to*
15 *www.visitcalifornia.com presented by the California Travel and*
16 *Tourism Commission on the Internet Web site of the feature,*
17 *television series, or video game. For a music video or commercial,*
18 *the California promotion shall consist of a link to*
19 *www.visitcalifornia.com, presented by the California Travel and*
20 *Tourism Commission, on the Internet Web site of the music video*
21 *or commercial.*

22 (C) *The applicable percentage shall increase by either of the*
23 *following:*

24 (i) *Five percent if each qualified motion picture, for which*
25 *qualified expenditures are aggregated for the particular claim for*
26 *the credit, incurred or paid the qualified expenditures relating to*
27 *original photography outside of a major city zone.*

28 (ii) *Two and one-half percent if at least one of the qualified*
29 *motion pictures, for which qualified expenditures are aggregated*
30 *for the particular claim for the credit, incurred or paid the qualified*
31 *expenditures relating to original photography within a major city*
32 *zone.*

33 (b) *For the purposes of this section, the following definitions*
34 *apply:*

35 (1) (A) *“Employee fringe benefits” means the amount allowable*
36 *as a deduction under this part to the qualified taxpayer involved*
37 *in the production of the qualified motion picture, exclusive of any*
38 *amounts contributed by employees, for any year during the*
39 *production period with respect to any of the following:*

1 (i) Employer contributions under any pension, profit-sharing,
2 annuity, or similar plan.

3 (ii) Employer-provided coverage under any accident or health
4 plan for employees.

5 (iii) The employer's cost of life or disability insurance provided
6 to employees.

7 (B) Any amount treated as wages under clause (i) of
8 subparagraph (A) of paragraph (12) shall not be taken into account
9 under this paragraph.

10 (2) "Major city zone" means an area within 15 miles of a city
11 with a population over 300,000.

12 (3) "Original photography" includes principal photography,
13 additional unit photography, and reshooting original footage.

14 (4) (A) "Postproduction" means the final activities in a
15 qualified motion picture's production, including editing, foley
16 recording, automatic dialogue replacement, sound editing, scoring
17 and music editing, beginning and end credits, negative cutting,
18 negative processing and duplication, the addition of sound and
19 visual effects, soundmixing, film-to-tape transfers, encoding, and
20 color correction.

21 (B) "Postproduction" does not include the manufacture or
22 shipping of release prints.

23 (5) "Preproduction" means the process of preparation for actual
24 physical production which begins after a qualified motion picture
25 has received a firm agreement of financial commitment, or is
26 greenlit, with, for example, the establishment of a dedicated
27 production office, the hiring of key crew members, and includes,
28 but is not limited to, activities that include location scouting and
29 execution of contracts with vendors of equipment and stage space.

30 (6) "Principal photography" means the phase of production
31 during which the motion picture is actually shot, as distinguished
32 from preproduction and post production.

33 (7) "Production period" means the period beginning with
34 preproduction and ending upon completion of postproduction.

35 (8) "Qualified expenditures" means amounts paid or incurred
36 for tangible personal property purchased or leased, and used,
37 within this state during the production period of a qualified motion
38 picture and payments, including qualified wages, for services
39 performed within this state during the production period of a
40 qualified motion picture.

1 (9) (A) *“Qualified individual” means any individual who*
2 *performs services during the production period in an activity*
3 *related to the production of a qualified motion picture.*

4 (B) *“Qualified individual” shall not include either of the*
5 *following:*

6 (i) *Any individual related to the qualified taxpayer as described*
7 *in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal*
8 *Revenue Code.*

9 (ii) *Any 5-percent owner, as defined in Section 416(i)(1)(B) of*
10 *the Internal Revenue Code, of the qualified taxpayer.*

11 (10) (A) *“Qualified motion picture” means a motion picture*
12 *that is produced for distribution to the general public, regardless*
13 *of medium, that is one of the following:*

14 (i) *A feature.*

15 (ii) *A television series.*

16 (iii) *A music video.*

17 (iv) *A commercial.*

18 (v) *A video game.*

19 (B) *“Qualified motion picture” shall not include a motion*
20 *picture produced for private noncommercial use, such as weddings,*
21 *graduations, or as part of an educational course and made by*
22 *students, a news program, current events or public events program,*
23 *talk show, game show, sporting event or activity, awards show,*
24 *telethon or other production that solicits funds, reality television*
25 *program, clip-based programming if more than 50 percent of the*
26 *content is comprised of licensed footage, documentaries, variety*
27 *programs, daytime dramas, strip shows, one-half hour (air time)*
28 *episodic television shows, or any production that falls within the*
29 *recordkeeping requirements of Section 2257 of Title 18 of the*
30 *United States Code.*

31 (11) *“Qualified taxpayer” means a taxpayer who has paid or*
32 *incurred qualified expenditures.*

33 (12) (A) *“Qualified wages” means all of the following:*

34 (i) *Any wages subject to withholding under Division 6*
35 *(commencing with Section 13000) of the Unemployment Insurance*
36 *Code that were paid or incurred by any taxpayer involved in the*
37 *production of a qualified motion picture with respect to a qualified*
38 *individual for services performed on the qualified motion picture*
39 *production within this state.*

1 (ii) *The portion of any employee fringe benefits paid or incurred*
2 *by any taxpayer involved in the production of the qualified motion*
3 *picture that are properly allocable to qualified wage amounts*
4 *described in clauses (i), (iii), and (iv).*

5 (iii) *Any payments made to a qualified entity for services*
6 *performed in this state by qualified individuals within the meaning*
7 *of paragraph (9).*

8 (iv) *Remuneration paid to an independent contractor who is a*
9 *qualified individual for services performed within this state by that*
10 *qualified individual.*

11 (B) *“Qualified wages” shall not include any of the following:*

12 (i) *Expenses, including wages, related to new use, reuse, clip*
13 *use, licensing, secondary markets, or residual compensation, or*
14 *the creation of any ancillary product, including, but not limited*
15 *to, a soundtrack album, toy, game, trailer, or teaser.*

16 (ii) *Expenses, including wages, paid or incurred with respect*
17 *to acquisition, development, turnaround, or any rights thereto.*

18 (iii) *Expenses, including wages, related to financing, overhead,*
19 *marketing, promotion, or distribution of a qualified motion picture.*

20 (iv) *Expenses, including wages, paid per person per qualified*
21 *motion picture for writers, directors, music directors, music*
22 *composers, music supervisors, producers, and performers, other*
23 *than background actors with no scripted lines.*

24 (c) (1) *Notwithstanding any other law, a qualified taxpayer*
25 *may sell any credit allowed under this section to an unrelated*
26 *party.*

27 (2) *The qualified taxpayer shall report to the Franchise Tax*
28 *Board prior to the sale of the credit, in the form and manner*
29 *specified by the Franchise Tax Board, all required information*
30 *regarding the purchase and sale of the credit, including the social*
31 *security or other taxpayer identification number of the unrelated*
32 *party to whom the credit has been sold, the face amount of the*
33 *credit sold, and the amount of consideration received by the*
34 *qualified taxpayer for the sale of the credit.*

35 (3) *A credit shall not be sold pursuant to this subdivision to*
36 *more than one taxpayer, nor may the credit be resold by the*
37 *unrelated party to another taxpayer or other party.*

38 (4) *A party that has acquired tax credits under this section shall*
39 *be subject to the requirements of this section.*

1 (5) *In no event may a qualified taxpayer assign or sell any tax*
2 *credit to the extent the tax credit allowed by this section is claimed*
3 *on any tax return of the qualified taxpayer.*

4 (6) *In the event that both the original taxpayer and a taxpayer*
5 *to whom the credit has been sold both claim the same amount of*
6 *credit on their tax returns, the Franchise Tax Board may disallow*
7 *the credit of either taxpayer, so long as the statute of limitations*
8 *upon assessment remains open.*

9 (7) *Subdivision (g) of Section 17039 shall not apply to any credit*
10 *sold pursuant to this subdivision.*

11 (8) *For purposes of this subdivision, the unrelated party or*
12 *parties that purchase a credit pursuant to this subdivision shall*
13 *be treated as a qualified taxpayer pursuant to paragraph (1) of*
14 *subdivision (a).*

15 (d) *In the case where the credit allowed by this section exceeds*
16 *the “net tax,” the excess may be carried over to reduce the “net*
17 *tax” in the following year, and succeeding seven years if necessary,*
18 *until the credit is exhausted.*

19 (e) *A deduction otherwise allowed under this part for any*
20 *amount paid or incurred by the qualified taxpayer upon which the*
21 *credit is based shall be reduced by the amount of the credit allowed*
22 *by this section.*

23 (f) *Credit under this section shall be allowed only for credits*
24 *claimed on a timely filed original return of the qualified taxpayer.*

25 (g) (1) *The Franchise Tax Board may prescribe rules,*
26 *guidelines, or procedures necessary or appropriate to carry out*
27 *the purposes of this section.*

28 (2) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
29 *Division 3 of Title 2 of the Government Code does not apply to*
30 *any standard, criterion, procedure, determination, rule, notice, or*
31 *guideline established or issued by the Franchise Tax Board*
32 *pursuant to this section.*

33 SEC. 2. *Section 23618 is added to the Revenue and Taxation*
34 *Code, to read:*

35 23618. (a) (1) *For taxable years beginning on or after January*
36 *1, 2016, there shall be allowed to a qualified taxpayer a credit*
37 *against the “tax,” as defined in Section 23036, in an amount equal*
38 *to the applicable percentage, as specified in paragraph (2), of the*
39 *qualified expenditures for the production of a qualified motion*
40 *picture in California. A credit shall not be allowed under this*

1 *section for any qualified expenditures for the production of a*
2 *motion picture in California if a credit has been claimed for those*
3 *same expenditures under Section 23685.*

4 *(2) For the purposes of paragraph (1), the applicable percentage*
5 *shall be:*

6 *(A) Twenty percent of the qualified expenditures attributable*
7 *to the production of one or more qualified motion pictures in*
8 *California with an aggregate qualified expenditure amount that*
9 *equals or exceeds five hundred thousand dollars (\$500,000).*

10 *(B) The applicable percentage shall increase by 10 percent if*
11 *each qualified motion picture, for which qualified expenditures*
12 *are aggregated for the particular claim for the credit, includes a*
13 *California promotion. For a feature, television series, or video*
14 *game, the California promotion shall consist of a five-second long*
15 *logo that promotes California in the end credits before the*
16 *below-the-line crew crawl for the life of the project and a link to*
17 *www.visitcalifornia.com presented by the California Travel and*
18 *Tourism Commission on the Internet Web site of the feature,*
19 *television series, or video game. For a music video or commercial,*
20 *the California promotion shall consist of a link to*
21 *www.visitcalifornia.com presented by the California Travel and*
22 *Tourism Commission on the Internet Web site of the music video*
23 *or commercial.*

24 *(C) The applicable percentage shall increase by either of the*
25 *following:*

26 *(i) Five percent if each qualified motion picture, for which*
27 *qualified expenditures are aggregated for the particular claim for*
28 *the credit, incurred or paid the qualified expenditures relating to*
29 *original photography outside of a major city zone.*

30 *(ii) Two and one-half percent if at least one of the qualified*
31 *motion pictures, for which qualified expenditures are aggregated*
32 *for the particular claim for the credit, incurred or paid the qualified*
33 *expenditures relating to original photography within a major city*
34 *zone.*

35 *(b) For the purposes of this section, the following definitions*
36 *shall apply:*

37 *(1) (A) "Employee fringe benefits" means the amount allowable*
38 *as a deduction under this part to the qualified taxpayer involved*
39 *in the production of the qualified motion picture, exclusive of any*

1 amounts contributed by employees, for any year during the
2 production period with respect to any of the following:

3 (i) Employer contributions under any pension, profit-sharing,
4 annuity, or similar plan.

5 (ii) Employer-provided coverage under any accident or health
6 plan for employees.

7 (iii) The employer's cost of life or disability insurance provided
8 to employees.

9 (B) Any amount treated as wages under clause (i) of
10 subparagraph (A) of paragraph (12) shall not be taken into account
11 under this paragraph.

12 (2) "Major city zone" means an area within 15 miles of a city
13 with a population over 300,000.

14 (3) "Original photography" includes principal photography,
15 additional unit photography, and reshooting original footage.

16 (4) (A) "Postproduction" means the final activities in a
17 qualified motion picture's production, including editing, foley
18 recording, automatic dialogue replacement, sound editing, scoring
19 and music editing, beginning and end credits, negative cutting,
20 negative processing and duplication, the addition of sound and
21 visual effects, soundmixing, film-to-tape transfers, encoding, and
22 color correction.

23 (B) "Postproduction" does not include the manufacture or
24 shipping of release prints.

25 (5) "Preproduction" means the process of preparation for actual
26 physical production which begins after a qualified motion picture
27 has received a firm agreement of financial commitment, or is
28 greenlit, with, for example, the establishment of a dedicated
29 production office, the hiring of key crew members, and includes,
30 but is not limited to, activities that include location scouting and
31 execution of contracts with vendors of equipment and stage space.

32 (6) "Principal photography" means the phase of production
33 during which the motion picture is actually shot, as distinguished
34 from preproduction and post production.

35 (7) "Production period" means the period beginning with
36 preproduction and ending upon completion of postproduction.

37 (8) "Qualified expenditures" means amounts paid or incurred
38 for tangible personal property purchased or leased, and used,
39 within this state during the production period of a qualified motion
40 picture and payments, including qualified wages, for services

1 performed within this state during the production period of a
2 qualified motion picture.

3 (9) (A) “Qualified individual” means any individual who
4 performs services during the production period in an activity
5 related to the production of a qualified motion picture.

6 (B) “Qualified individual” shall not include either of the
7 following:

8 (i) Any individual related to the qualified taxpayer as described
9 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
10 Revenue Code.

11 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
12 the Internal Revenue Code, of the qualified taxpayer.

13 (10) (A) “Qualified motion picture” means a motion picture
14 that is produced for distribution to the general public, regardless
15 of medium, that is one of the following:

16 (i) A feature.

17 (ii) A television series.

18 (iii) A music video.

19 (iv) A commercial.

20 (v) A video game.

21 (B) “Qualified motion picture” shall not include a motion
22 picture produced for private noncommercial use, such as weddings,
23 graduations, or as part of an educational course and made by
24 students, a news program, current events or public events program,
25 talk show, game show, sporting event or activity, awards show,
26 telethon or other production that solicits funds, reality television
27 program, clip-based programming if more than 50 percent of the
28 content is comprised of licensed footage, documentaries, variety
29 programs, daytime dramas, strip shows, one-half hour (air time)
30 episodic television shows, or any production that falls within the
31 recordkeeping requirements of Section 2257 of Title 18 of the
32 United States Code.

33 (11) “Qualified taxpayer” means a taxpayer who has paid or
34 incurred qualified expenditures.

35 (12) (A) “Qualified wages” means all of the following:

36 (i) Any wages subject to withholding under Division 6
37 (commencing with Section 13000) of the Unemployment Insurance
38 Code that were paid or incurred by any taxpayer involved in the
39 production of a qualified motion picture with respect to a qualified

1 *individual for services performed on the qualified motion picture*
2 *production within this state.*

3 *(ii) The portion of any employee fringe benefits paid or incurred*
4 *by any taxpayer involved in the production of the qualified motion*
5 *picture that are properly allocable to qualified wage amounts*
6 *described in clauses (i), (iii), and (iv).*

7 *(iii) Any payments made to a qualified entity for services*
8 *performed in this state by qualified individuals within the meaning*
9 *of paragraph (9).*

10 *(iv) Remuneration paid to an independent contractor who is a*
11 *qualified individual for services performed within this state by that*
12 *qualified individual.*

13 *(B) "Qualified wages" shall not include any of the following:*

14 *(i) Expenses, including wages, related to new use, reuse, clip*
15 *use, licensing, secondary markets, or residual compensation, or*
16 *the creation of any ancillary product, including, but not limited*
17 *to, a soundtrack album, toy, game, trailer, or teaser.*

18 *(ii) Expenses, including wages, paid or incurred with respect*
19 *to acquisition, development, turnaround, or any rights thereto.*

20 *(iii) Expenses, including wages, related to financing, overhead,*
21 *marketing, promotion, or distribution of a qualified motion picture.*

22 *(iv) Expenses, including wages, paid per person per qualified*
23 *motion picture for writers, directors, music directors, music*
24 *composers, music supervisors, producers, and performers, other*
25 *than background actors with no scripted lines.*

26 *(c) (1) Notwithstanding any other law, a qualified taxpayer*
27 *may sell any credit allowed under this section to an unrelated*
28 *party.*

29 *(2) The qualified taxpayer shall report to the Franchise Tax*
30 *Board prior to the sale of the credit, in the form and manner*
31 *specified by the Franchise Tax Board, all required information*
32 *regarding the purchase and sale of the credit, including the social*
33 *security or other taxpayer identification number of the unrelated*
34 *party to whom the credit has been sold, the face amount of the*
35 *credit sold, and the amount of consideration received by the*
36 *qualified taxpayer for the sale of the credit.*

37 *(3) A credit shall not be sold pursuant to this subdivision to*
38 *more than one taxpayer, nor may the credit be resold by the*
39 *unrelated party to another taxpayer or other party.*

1 (4) A party that has acquired tax credits under this section shall
2 be subject to the requirements of this section.

3 (5) In no event may a qualified taxpayer assign or sell any tax
4 credit to the extent the tax credit allowed by this section is claimed
5 on any tax return of the qualified taxpayer.

6 (6) In the event that both the original taxpayer and a taxpayer
7 to whom the credit has been sold both claim the same amount of
8 credit on their tax returns, the Franchise Tax Board may disallow
9 the credit of either taxpayer, so long as the statute of limitations
10 upon assessment remains open.

11 (7) Subdivision (i) of Section 23036 shall not apply to any credit
12 sold pursuant to this subdivision.

13 (8) For purposes of this subdivision, the unrelated party or
14 parties that purchase a credit pursuant to this subdivision shall
15 be treated as a qualified taxpayer pursuant to paragraph (1) of
16 subdivision (a).

17 (d) In the case where the credit allowed by this section exceeds
18 the “net tax,” the excess may be carried over to reduce the “net
19 tax” in the following year, and succeeding seven years if necessary,
20 until the credit is exhausted.

21 (e) A deduction otherwise allowed under this part for any
22 amount paid or incurred by the qualified taxpayer upon which the
23 credit is based shall be reduced by the amount of the credit allowed
24 by this section.

25 (f) Credit under this section shall be allowed only for credits
26 claimed on a timely filed original return of the qualified taxpayer.

27 (g) (1) The Franchise Tax Board may prescribe rules,
28 guidelines, or procedures necessary or appropriate to carry out
29 the purposes of this section.

30 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code does not apply to
32 any standard, criterion, procedure, determination, rule, notice, or
33 guideline established or issued by the Franchise Tax Board
34 pursuant to this section.

35 SEC. 3. This act provides for a tax levy within the meaning of
36 Article IV of the Constitution and shall go into immediate effect.

37 ~~SECTION 1. It is the intent of the Legislature to enact~~
38 ~~legislation to provide a credit against the taxes imposed under the~~
39 ~~Personal Income Tax Law and the Corporation Tax Law for motion~~
40 ~~pictures that would accomplish all of the following:~~

1 ~~(a) Provide for a transferable tax credit in an amount equal to~~
2 ~~20 percent of the qualified production and postproduction~~
3 ~~expenditures for the motion picture paid or incurred within~~
4 ~~California, provided the motion picture is not subject to specified~~
5 ~~recordkeeping requirements under federal law.~~

6 ~~(b) Provide for an additional 10 percent credit amount if a~~
7 ~~production company of a motion picture eligible for the tax credit~~
8 ~~includes an imbedded California promotional logo in the feature~~
9 ~~film, television series, music video, or video game project.~~

10 ~~(c) Include in the calculation of the qualified expenditures the~~
11 ~~number and wages of in-state and out-of-state residents working~~
12 ~~in California, including any employee fringe benefits.~~

13 ~~(d) Allow the credit without including a repeal date.~~

14 ~~(e) Allow the taxpayer to group multiple qualified motion~~
15 ~~pictures, specifically commercials and music videos, in order to~~
16 ~~reach the minimum qualified expenditure amount.~~